AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY CONCERNING THE ESTABLISHMENT OF A TROPICAL FOREST CONSERVATION FUND AND A TROPICAL FOREST CONSERVATION BOARD

The Government of the United States of America (U.S. Government) and the Government of the Republic of Paraguay (Government of Paraguay), hereinafter known as the Parties,

Seeking to facilitate the conservation, protection, restoration, and sustainable management of tropical forests, which provide a wide range of benefits to humankind,

Desiring to enhance the friendship and spirit of cooperation between the Parties;

Recognizing that tropical deforestation and forest degradation continue to be serious problems in many regions of the world,

Also recognizing that the alleviation of external debt can reduce economic pressures on countries and result in increased conservation of tropical forests,

Further recognizing that the economic benefits to local communities of sustainable uses of tropical forests are critical to the protection and sustainable management of tropical forests,

Wishing to ensure that resources freed from debt are targeted to the conservation of tropical forests,

Also wishing to further the Agreement between the Government of the United States of America and the Government of the Republic of Paraguay Regarding the Reduction of Certain Debts Owed to the Government of the United States and its Agencies, hereinafter known as the "Debt Reduction Agreement," which reduces certain debts owed the U.S. Government through the exchange of old obligations for new obligations, known as the New Tropical Forest Conservation Act (New TFCA) Obligations,

Have agreed as follows:

Article I
PURPOSE

The purpose of this Agreement is to provide for the establishment of a Tropical Forest Conservation Fund and an administering Tropical Forest Conservation Board in order to promote activities designed to conserve, maintain and restore the forests of Paraguay.

Article II
TROPICAL FOREST CONSERVATION FUND

1. Within eight months of the signing of this Agreement, the Government of Paraguay shall establish a Tropical Forest Conservation Fund, hereinafter known as the "Fund," in accordance with its own laws. The Fund shall be administered by the Board established pursuant to Article III of this Agreement. Any monies deposited in the Fund, or grants made from the Fund, will be free from any taxation, levies, fees or other charges imposed by the Parties to the extent permissible by the laws of the Parties.

2. Monies, in the form of local currencies or other currencies, from other sources, including but not limited to public and private creditors of the Government of Paraguay and voluntary contributions from the Government of Paraguay, other governments, and non-governmental entities, may be deposited into the Fund.

3. The amounts deposited in the Fund shall be subject to the provisions of this Agreement. Deposits in the Fund made pursuant to Article II, paragraph 3 of the Debt Reduction Agreement shall be the joint property of the Government of Paraguay and the U.S. Government until they are disbursed pursuant to the procedures set forth in Article VI of this Agreement. The Board and the Fiscal Agent shall develop a provision to be included in each Grant Agreement approved pursuant to Article IV, paragraph 2 of this Agreement to address the recovery of funds misspent or misused by, and the return of any unused grant funds held by a grantee.

4. Within eight months of the signing of this Agreement, the Government of Paraguay, with the concurrence of the U.S. Government, shall select a Fiscal Agent for the Fund charged with monitoring, disbursement and, if applicable, investment of the monies in the Fund. The contract between the Government of Paraguay and the Fiscal Agent, which shall be approved by the U.S. Government, shall also be concluded within that time period and shall specify the subordinate relationship of the Fiscal Agent to the Board established pursuant to Article III of this Agreement. The Parties shall agree upon a selection process to govern the selection of the Fiscal Agent. The Fiscal Agent is responsible for promptly notifying the Board in writing when the Government of Paraguay makes a deposit in the Fund pursuant to paragraph 2 of this Article, or if a deposit is overdue.

5. Monies in the Fund shall be invested until disbursed, with every effort made to ensure that such investments yield a positive real rate within acceptable limits of risk in accord with sound investment practices. To accomplish this goal, the Parties may jointly request the conversion of all or part of the monies in the Fund into U.S. dollars or other hard currencies for investment purposes. Returns on investment shall be deposited by the Fiscal Agent in the Fund until disbursed, pursuant to the procedures set forth in Article VI of this Agreement.

Article III
ESTABLISHMENT AND COMPOSITION OF THE TROPICAL FOREST CONSERVATION BOARD

1. Within eight months of the signing of this Agreement, the Government of Paraguay shall establish, in accordance with its domestic laws and in consultation with the U.S. Government and domestic Paraguayan nongovernmental entities with an interest in forests (such as local community, scientific, academic and forestry organizations), a Tropical Forest Conservation Board, hereinafter known as the "Board," to administer the Fund. The Board shall be discrete and separate from any existing Board, Commission, Foundation, or other entity in Paraguay. The Board shall have the legal status of a non-profit organization (currently governed by Articles 94-101 of the Paraguayan Civil Code) and shall be granted such status upon ratification of this Agreement by the Congress of the Republic of Paraguay. The legal entity to be established shall be governed by the provisions of this Agreement.

2. The Board shall consist of seven members. It shall be composed of:

   A. One representative appointed by the U.S. Government;

   B. Two representatives appointed by the Government of Paraguay; and

   C. Four representatives of a broad range of nongovernmental forest related interests within Paraguay, including representatives from:

      (i) Environmental nongovernmental organizations;
      (ii) Local community development nongovernmental organizations; and
      (iii) Scientific, academic and/or forestry organizations.

3. The representatives under paragraph 2(C) of this Article shall constitute a majority of the members of the Board. They shall be named to the Board by the Government of Paraguay in consultation with a range of domestic nongovernmental entities in Paraguay and with the consent of the U.S. Government.

4. Board members named pursuant to paragraphs 2(A) and (B) above shall serve *ad honorem* and at the discretion of the naming Party. Board members described in paragraph 2(C) above shall serve *ad honorem,* except that the administrative expenses of such Board members may be paid as provided in Article IV, paragraph 9 of this Agreement. Board members described in paragraph 2(C) above shall serve in their expert capacity for a three year term, and may be removed prior to the end of their term only for malfeasance. Any such member of the Board may serve consecutive terms if both Parties agree. The length of service of Board members named pursuant to paragraphs 2(A) and (B) above shall be at the discretion of the naming Party.

5. The Board may not consider any proposed grant which if approved, would result in a financial benefit for a Board member or any person in his family, or for an organization which employs the member or in which the member has an affiliation or a direct financial interest.

6. The Government of Paraguay, after the Closing Date specified in Article II of the Debt Reduction Agreement, but within eight months of the signing of this Agreement, shall:

A. Prepare the founding documents of the Board which are considered bylaws in accordance with Paraguayan law, which shall be approved by the U.S. Government prior to finalization, and transform them into a Public Deed, in the Government`s Public Notary office; and

B. Register such documents in the Public Registries of Paraguay without further formalities.

Article IV
FUNCTIONS OF THE BOARD

1. The Board shall be responsible for administration and management of the Fund, for disbursements of grants from the Fund to support eligible activities, and for oversight of activities financed from the Fund, pursuant to this Agreement. The Government of Paraguay, in consultation with the U.S. Government, shall ensure that the Board has the necessary authority under Paraguayan law to carry out the functions assigned to it in this Agreement. The Board shall have full legal competence to implement the programs necessary to fund grants from the Fund.

2. With respect to the management of the Fund, the Board shall:

A. Issue and widely disseminate a public announcement on the call for grant applications, which announcement shall state the purpose of the Fund, eligible activities and eligible entities in accordance with Article V of this Agreement, the criteria for the selection of grant recipients, the schedule of the grants process, and any other requirements established by the Board for the award of grants from the Fund;

B. Receive applications for grants from entities described in Article V, paragraph 3 of this Agreement and award grants consistent with Article V of this Agreement on the basis of an evaluation of applications on their merits;

C. Publicly announce grants awarded by the Board;

D. Develop with each grant recipient a Grant Agreement which shall include provisions on, *inter alia*, receipt and use of funds, audit and reporting requirements, improper use of funds and subsequent remedies, representations and warranties, and intellectual property.

E. Within six months of the Board's establishment, develop and submit to the Parties for their approval a long-term strategic plan for the operation of the Fund, including an annual budget showing prospective activities and expected administrative and program costs.

F. Take steps to meet the relevant "performance criteria" set forth in the "TFCA Performance Evaluation" document, the current form of which is contained in the Annex to this Agreement, recognizing the document may be amended by the U.S. Government in its sole discretion from time to time;

G. Within 18 months after the signing of this Agreement, and on an annual basis thereafter, submit to the Parties a completed "TFCA Performance Evaluation" document, which shall include as annexes:

(i) A report on grant activities for the previous year, including multi-year activities funded by the Board, which shall include information regarding the grants awarded, grant recipients, grant amounts, activities funded, and status of grant implementation, as well as information on the status of audits of randomly selected grants; and

(ii) A financial audit conducted in accordance with generally accepted international accounting standards by an independent auditor, covering the previous program year.

H. Hire an Executive Director to coordinate and implement, with the guidance of the Board, all necessary actions required for the adequate functioning of the Board, including the hiring of necessary support staff with the approval of the Board.

3. A proposed grant which would over the project life require in excess of $100,000 to be disbursed from the Fund and which is endorsed by the Board, shall be presented by the Board to both Parties for approval. If either Party disapproves such a grant, that Party must notify the Board of its disapproval, in which case the Board shall not award the proposed grant. Proposed grants not disapproved by a Party within 30 Business Days of presentation to that Party's representative on the Board shall no longer be subject to disapproval by that Party. For purposes of

this Agreement, "Business Day" means any day on which the Central Bank of Paraguay and the Federal Reserve Bank of New York are both open for business.

4. The Board shall adopt, by majority vote, guidelines, internal policies and procedures for its operation, which shall be subject to the approval of the Parties. No disbursements pursuant to Article VI may be made prior to the adoption of these procedures.

5. The Board shall approve procedures and schedules for the grant process, including procedures and schedules relating to public announcements, grant applications and review, monitoring, and auditing.

6. The Board shall establish and make public selection criteria for awarding grants, which should include criteria for evaluating the merits of application(s) and the prospects of success of proposed activities.

7. The Board shall monitor performance under Grant Agreements to determine whether time schedules and other performance goals are being achieved. Grant Agreements shall require periodic progress reports from the grantee to the Board. Such reports shall review all components essential to the successful achievement of the goals of the activity.

8. The Board shall meet at least once every three months.

9. The Board may draw sums from the Fund necessary to pay for reasonable administrative expenses of the Board, including the audit required pursuant to paragraph (2)(G)(ii) of this Article. Board members appointed under Article III, paragraph 2(C) of this Agreement may be compensated from the Fund only for travel expenses and reasonable per diem. Such expenses incurred by Board members appointed under Article III, paragraphs 2(A) and (B) of this Agreement shall be borne by the Party which that member represents. Administrative expenses shall not exceed a ceiling established by the Parties' representatives on the Board, taking into account anticipated administrative expenses and funds available in the Fund. The Parties' representatives on the Board shall review and adjust, as appropriate, the ceiling for administrative expenses on an annual basis.

11. The Board's written policies, procedures, summaries of proceedings, books, records, reports, and any organizing statutes shall be retained in the files of the Board. A permanent record shall also be maintained of the decision to award each grant, including an explanation of the basis of the award decision. The Board shall make available for easy public inspection, such as by the Internet where appropriate, its written policies, operating procedures, summaries of proceedings, and explanations of award decisions. Upon request, authorities of either Party shall be granted access to all Board documents, including minutes of meetings, books, records, and reports.

Article V
ELIGIBLE ACTIVITIES AND GRANT RECIPIENTS

1. Amounts deposited in the Fund shall be used to provide grants to conserve, maintain, or restore tropical forests areas specified in paragraph 2 of this Article, through one or more of the following eligible types of activities:

   A. Establishment, restoration, protection and maintenance of parks, protected areas, and reserves. Such activities could include, for example, demarcation of protected forest areas and indigenous reserves, establishment of new or expanded protected forests and buffer zones, identification of unique or representative forest areas, or inventory and protection of areas featuring species richness and high levels of endemism.

   B. Development and implementation of scientifically sound systems of natural resource management including land and ecosystem management practices. Such activities could include, for example, development and implementation of scientifically sound systems of forest land and forest resources management; forest resources assessment and inventory; land and resource use monitoring and evaluation; implementation of criteria and indicators for sustainable forest management; development and implementation of forest management information systems; development and implementation of watershed ecosystem management and community based forest management strategies; adoption of research-based forest technologies; plantation establishment on degraded lands; natural forest regeneration, rehabilitation and management; or testing and application of silvicultural techniques.

   C. Training programs to increase scientific, technical and managerial capacities of individuals and organizations involved in forest conservation efforts. Such activities could include, for example, short-term training courses, internships and study tours; development of community extension services; environmental education and public awareness programs; enhancement of university curricula in forest management or conservation biology; or education and training to develop capacity of local nongovernmental organizations.

   D. Restoration, protection, or sustainable use of diverse animal and plant species. Such activities could include, for example, rehabilitation of degraded forests; sustainable fishing and animal farming; improvement of forest health and vitality and relevant research and development; efforts to assess and address problems of forest law enforcement and associated illegal practices.

   E. Research and identification of medicinal uses of tropical forest plant life to treat human diseases, illnesses and health related concerns. Such activities

could include, for example, ethnobotany studies; sample collection and analysis; or technical document preparation, publication and dissemination.

F. Development and support of the livelihoods of individuals living in or near a tropical forest in a manner consistent with protecting such a tropical forest. Such activities could include, for example, development of community-based and women's enterprises and other environmentally friendly livelihood enterprises involving wood or non-wood products; application of low impact logging practices; or development of multiple-use tree species outside natural forests.

2. Eligible activities described in paragraph 1 shall be undertaken in one or more of the following areas of the southern corridor of the Atlantic Forest of Alto Parana within Paraguay, unless otherwise decided by the Parties:

A. San Rafael National Park Reserve;
B. Caazapá (formerly Caaguazú) National Park;
C. Ybyturuzu Managed Resources Reserve;
D. Tapyta Private Nature Reserve;
E. Ybycui National Park; and
F. Ypetí Private Nature Reserve.

3. To guide its approval of grants, the Board may identify as it deems necessary priorities among the eligible activities specified in paragraph 1 above and among the parks and reserves specified in paragraph 2 above, paying particular attention to grants which consolidate and enhance protected areas within the San Rafael National Park, which contains a rich diversity of native species and is considered at high risk from human intervention."

4. The Board may consider approving grants for eligible activities in areas between, or immediately adjacent to, the parks and reserves specified in paragraph 2 above where such areas provide buffer zones for, or contain communities which could impact, such parks and reserves. The Board may also consider approving grants for eligible activities in corridors linking two or more of the parks or reserves specified in paragraph 2 above where such corridors will contribute to the conservation or restoration of such parks or reserves.

5. Entities in Paraguay which shall be eligible to receive grants from the Fund are:

A. Nongovernmental environmental, forestry, conservation, and indigenous people organizations of, or active in, Paraguay, including those organizations involved in development, education, science research, or forest management;

B. Other appropriate local or regional entities of, or active in, Paraguay; and

C. In exceptional circumstances, the Government of Paraguay.

6. In providing grants, priority shall be given to projects that are run by local nongovernmental organizations and other private entities and that involve local communities in their planning and execution.

7. Grants shall be awarded within the financial capacity of the Board and strictly on the merits of proposals presented to the Board.

Article VI
DISBURSEMENT OF FUNDS

1. The Board shall instruct the Fiscal Agent to disburse grant monies from the Fund to entities selected to receive grants pursuant to Article V of this Agreement. All disbursements shall be made pursuant to a Grant Agreement, as specified in Article IV, paragraph 2(D) of this Agreement.

2. The Fiscal Agent shall make disbursements promptly to designated recipients in accordance with directions received from the Board. In no case shall more than 10 Business Days elapse between the Fiscal Agent's receipt of a direction for disbursement from the Board and the actual disbursement of funds to a grant recipient.

Article VII
RESOLUTION AND REVIEW OF DISPUTES

1. Upon the written request of either Party, the Parties shall consult each other concerning the implementation or interpretation of this Agreement. These consultations shall be completed within 60 Business Days after a request for consultations is received from the other Party.

2. Consultations between the Parties concerning the interpretation or implementation of this Agreement may be conducted through written submissions between the Department of State of the U.S. Government and the Ministry of Finance of the Government of Paraguay. Unless the U.S. Government otherwise notifies the Government of Paraguay, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs shall be the contact point in the Department of State. Unless the Government of Paraguay otherwise notifies the U.S. Government, the Vice-Minister of Finance for Economy and Integration shall be the contact point in the Ministry of Finance.

3. Either Party may request consultations with the Board and with the other Party after reviewing the Boards reports and audits presented pursuant to Article IV of this Agreement. Such request shall be made in writing. These consultations shall be completed within 60 Business Days after a request for consultations is received from the other Party, unless the period of consultation is extended by mutual agreement of the Parties.

4. The Parties shall meet to review the operation of this Agreement one year from the date of its entry into force, and periodically thereafter as the Parties so agree.

Article VIII
SUSPENSION OF DISBURSEMENTS

1. If at any time either of the Parties determines that any issue requiring consultation under Article VII of this Agreement has not been satisfactorily resolved, such Party may notify the other Party in writing.

2. Notwithstanding any other provisions of this Agreement, upon receipt by the Board of such written notification from the U.S. Government, the Board shall immediately direct the Fiscal Agent to suspend disbursements under Article VI of this Agreement.

3. Suspension of disbursements pursuant to paragraph 2 of this Article shall mean that no further approval of grants shall be undertaken until the Parties have jointly agreed to resume such activity. However, disbursements pursuant to previously-approved Grant Agreements shall proceed unless the specific Grant Agreement is suspended pursuant to the terms of that Grant Agreement.

4. Should the Parties jointly certify in writing to the Board that the manner in which a Grant Agreement was awarded was inconsistent with Articles III, IV or V of this Agreement or the operating procedures of the Board, the Parties may require the Board to suspend disbursements under that Grant Agreement. Should disbursements be so suspended, no further approval of any grants shall be undertaken until both Parties agree to resume the receipt, review and award of grants

5. If disbursements have not been suspended within seven (7) Business Days of the written notification referred to paragraph 2 above, ("the Notification Period"), the Government of Paraguay agrees that it will take any and all actions necessary to freeze the Fund until both Parties confirm in writing that the issues that led to freezing of those amounts have been resolved.

Article IX
TERMINATION

The Agreement may be terminated by either Party upon six months' written notice if: (i) the Debt Reduction Agreement is terminated and (ii) all funds resulting from the Payments in accordance with the Debt Reduction Agreement have been expended. In the event this Agreement is terminated, the provisions of this Agreement shall continue to apply for the purpose of completion of any previously authorized grants.

Article X
ENTRY INTO FORCE, AMENDMENT AND OTHER ARRANGEMENTS

1. This Agreement shall enter into force 40 calendar days after signature and shall remain in force unless terminated by the Parties in accordance with Article IX of this Agreement.

2. This Agreement may be amended by written agreement of the Parties.

3. Nothing in this Agreement shall prejudice other arrangements between the Parties concerning debt reduction or cooperation and assistance for tropical forest conservation purposes.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Asuncion, Paraguay, this 7th day of June 2006, in duplicate, in the English language.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

FOR THE GOVERNMENT OF THE REPUBLIC OF PARAGUAY

TFCA Evaluation Sheet

	Category	Function	Criteria	Fund Comments (w/ supporting material citation as appropriate)	Rating
			definition: "OC/B and its implementor" = The Oversight Committee/ Board and its Fund Administrator or Office of Exectutive Director.		Excellent (4); Acceptable (3); Needs Improvement (2); Unacceptable (1); NA
A.	**Implementation of Agreements**		A.1.1 The OC/B and its implementor become operational within one year from the signing of the agreements.		
			A.1.2 The Fund, or other implementor of the TFCA agreement, is in compliance with all articles of the agreements, including the legal registry of the appropriate implementing bodies.		
			A.1.3 The Fund, or other implementor of the TFCA agreement, completes, and makes accessible, annual audits, plans and reports as may be required in the agreements.		
B.	**Governance**	**Planning**	B.1.1 Within one year of January 1, 2005 or within one year of becoming operational, the OC/B has established a written strategic plan that includes (a) specific, key objectives, (b) a list, in order of importance, of conservation and funding priorities in order to meet those objectives, and (c) target dates for completion of objectives.		
			B.1.2 The established goals & objectives complement plans/programs of others (eg. national environmental plans, donors, swap partners).		
			B.1.3 The OC/B, or its implementors, have establised all internal operational policies and procedures in accordance with normal business standards.		
		Implementation	B.2.1 The OC/B meets in accordance with the bilateral agreement with achieves a quorum at these meetings.	(info should include no. of meetings, no. of meetings at which quorum was achieved)	
		Monitoring	B.3.1 The OC/B evaluates, on an annual basis, progress toward the key objectives specified in the strategic plan, and implements any changes judged necessary to remedy deficiencies in meeting the key objectives.		
			B.3.2 Within one year of January 1, 2005 or within one year of becoming operational, the OC/B has established and implemented a monitoring and evaluation plan for determining the conservation impact of funded projects. OC/B monitors assessment of impact of projects.	(please provide details of monitoring and evaluation methodology, percentage of projects undergoing M&E; number of visits per project; results of monitoring, administrator/OC/B corrective actions as applicable).	

			B.3.3 The OC/B conducts an annual performance review of institutional management (itself, the implementors, and, if applicable, the Trustee or Investment Manager).		
C.	**Grant Management**	**Planning**	C.1.1 The percentage of total funds paid into the Foundation or Fund (or other vehicle established to receive payments resulting from the Forest Conservation Agreement) disbursed as grants annually, is at a reasonable level.		
		Implementation	C.2.1 Request for Applications (RFAs), or other grant soliciation mechanisms used, are undertaken on a schedule consistent with an OC/B approved expenditure plan, if applicable, and widely publicized (if		
			C.2.2 Grant processing, including fund disbursement periods, is maintained within reasonable targeted timeframes.		
		Monitoring	C.3.1 Grant agreements require reporting on the conservation impact of project.		
			C.3.2 The OC/B has a policy on the need for, and the frequency of, financial audits of grant recipients.		
			C.3.3 Implementor ensures that all necessary grant recipient financial audits and/or impact reports are submitted as required by agreements.		
			C.3.4 The OC/B, through its implementors, ensures periodic on-site reviews of grant projects.	(e.g. number of active projects, number of active projects receiving site inspections, and number of site inspections per project).	
D.	**Financial Management**	**Planning**	D.1.1 The OC/B has established a financial plan (complete with budgets, forecasts of income and expenditures).		
			D.1.2 As appropriate, the OC/B has established a written investment policy (guidance for the implementor or fund manager).		
		Implementation	D.2.1 The administrative costs were kept within the limits established by the bilateral agreement or its amendments during the last fiscal year.		
			D.2.2 The OC/B has established, as appropriate, in-house or outsourced investment monitoring capabilities (separate from the Investment Manager).		
			D.2.3 Assuming fund sustainability beyond the life of the TFCA agreement is an objective, the fund has diversified its sources of revenue (fund raising).		